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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 New Parent World, LLC, d/b/a My Baby  
10 Experts,

11 Plaintiff,

12 v.

13 True To Life Productions, Inc.; Heritage  
14 House '76, Inc.; and Brandon Monahan,

15 Defendants.  
16

No. CV-23-08089-PCT-DGC

**ORDER**

17 Plaintiff New Parent World, LLC asserts various claims against Defendants True  
18 To Life Productions, Inc. (“True To Life”), Heritage House ’76, Inc. (“Heritage House”),  
19 and Brandon Monahan. Doc. 42. Defendants move for judgment on the pleadings on  
20 Counts 1, 2, 7, 8, and 10 under Federal Rule of Civil Procedure 12(c). Doc. 53. The motion  
21 is fully briefed, and the Court heard oral argument on September 10, 2024. Docs. 53, 76,  
22 78, 82. For reasons stated below, the Court will grant the motion in part and deny it in part.

23 **I. Background.**

24 Plaintiff created original copyrighted content for teaching breastfeeding techniques  
25 and newborn care. Doc. 42 ¶¶ 8-9. In 2010, Heritage House began purchasing and  
26 distributing the content in audio and DVD formats. *Id.* ¶ 11. On April 1, 2019, Plaintiff  
27 entered into a licensing and royalty agreement with Defendant True To Life, allowing it to  
28 distribute the content on a subscription-based website. *Id.* ¶¶ 11-15.

1 Plaintiff alleges that True To Life breached the agreement by making Plaintiff's  
 2 content available on a free trial basis. Doc. 42 ¶¶ 19-23. Plaintiff also alleges that True  
 3 To Life altered Plaintiff's content without permission and distributed it online, at times  
 4 without Plaintiff's copyright notice. *Id.* ¶¶ 24-38. Plaintiff further alleges that as the  
 5 agreement was about to end, Defendants created unauthorized derivative works using  
 6 Plaintiff's content and distributed them online bearing only Defendants' copyright notices.  
 7 *Id.* ¶¶ 39-50.

8 Plaintiff filed the original complaint in May 2023. Doc 1. Defendants answered  
 9 and asserted various affirmative defenses. Doc. 13. In October 2023, Plaintiff moved for  
 10 leave to amend the complaint, which the Court granted. Docs. 27, 39. Plaintiff's amended  
 11 complaint asserts ten claims: false copyright management information ("CMI") and  
 12 removal of CMI in violation of 17 U.S.C. §§ 1202(a) and (b) (Counts 1 and 2); copyright  
 13 infringement in violation of 17 U.S.C. § 501 (Counts 3-5); breach of contract and the  
 14 covenant of good faith and fair dealing under Arizona law (Counts 6 and 9); false  
 15 designation of origin and false description in violation of 15 U.S.C. § 1125 (Count 7);  
 16 unfair competition under Arizona law (Count 8); and unjust enrichment under Arizona law  
 17 (Count 10). *Id.* ¶¶ 53-131.

18 Defendants assert that Claims 1 and 2 fail because they are based on allegedly  
 19 derivative works; Count 7 fails because it is based on products created by Defendant True  
 20 to Life, not Plaintiff; and Counts 8 and 10 are preempted by federal copyright law. Doc. 53  
 21 at 1-2.

## 22 **II. Judgment on the Pleadings Standard.**

23 Rule 12(c) is functionally equivalent to Rule 12(b)(6). *Gregg v. Haw. Dep't of Pub.*  
 24 *Safety*, 870 F.3d 883, 887 (9th Cir. 2017). A successful Rule 12(c) motion must show that  
 25 the complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its  
 26 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A complaint  
 27 that sets forth a cognizable legal theory will survive a motion for judgment on the pleadings  
 28 if it contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is

plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court treats all allegations of material fact in the complaint as true and construes them in the light most favorable to Plaintiff. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

### III. Discussion.

#### A. Falsification and Removal of CMI (Counts 1 and 2).

The Digital Millennium Copyright Act (“DMCA”) defines CMI as information about the work itself, including the copyrighted status of the work, information about the author, and information in the copyright notice. 17 U.S.C. § 1202(c). Count 1 alleges Defendants violated § 1202(a) of the statute, which prohibits a person from knowingly distributing false CMI, when they created and distributed the Derivative Works with their CMI instead of Plaintiff’s.<sup>1</sup> Doc. 42 ¶¶ 54, 55. Count 2 alleges Defendants violated § 1202(b), which prohibits a person from intentionally removing or altering CMI, when they removed Plaintiff’s CMI from Plaintiff’s Intellectual Property and distributed it without authorization.<sup>2</sup> *Id.* ¶¶ 59, 60.

Defendants’ motion argues that both counts fail because §§ 1202(a) and (b) do not apply to derivative works, and the Derivative Works and modified Intellectual Property identified in the amended complaint are “distinct, derivative works.” Docs. 53 at 8-9, 78 at 4. Defendants’ motion addresses Counts 1 and 2 together, making no distinction between §§ 1202(a) and (b), and relies on district court cases which suggest that a work violates the DMCA only if it is an identical copy of the plaintiff’s original work. Doc. 53 at 7.

The Court is not persuaded by Defendants’ arguments. Their motion cited district court cases which rely on *Kirk Kara Corp. v. W. Stone & Metal Corp.*, No. CV 20-1931-DMG (EX), 2020 WL 5991503 (C.D. Cal. Aug. 14, 2020). *See* Doc. 43 at 6-7 (citing

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<sup>1</sup> Plaintiff defines “Derivative Works” as “the Recap Videos, Preview Videos, and Lesson Materials” created and distributed by True to Life. Doc. 42, ¶¶ 42, 43, 45, 46.

<sup>2</sup> Plaintiff defines “Intellectual Property” as “My Baby Experts’ content in English and Spanish audio and DVD formats, including its DVD breastfeeding courses.” Doc. 42, ¶ 10.

1 *Advanta-STAR Auto. Rsch. Corp. of Am. v. Search Optics, LLC*, 672 F. Supp. 3d 1035,  
 2 1057 (S.D. Cal. 2023); *O’Neal v. Sideshow, Inc.*, 583 F. Supp. 3d 1282, 1287 (C.D. Cal.  
 3 2022); and other cases). *Kirk Kara* states that “no DMCA violation exists where the works  
 4 are not identical,” 2020 WL 5991503, at \*6, but it relies on three cases that do not support  
 5 this position. This discrepancy has been described in *ADR Int’l v. Inst. for Supply Mgt.*,  
 6 667 F. Supp. 3d 411, 427 (S.D. Tex. 2023) (“Although the court in *Kirk Kara* held the  
 7 DMCA requires identical copies, the caselaw it cited does not support its holding.”); and 4  
 8 *Nimmer on Copyright* § 12A.10 at 19 n.150.7.

9 Other courts have held that an infringing work need not be an identical copy to  
 10 violate the DMCA. *See ADR*, 667 F. Supp. 3d at 429 (“none of the cases Defendants cite  
 11 support the proposition that § 1202 requires a plaintiff to plead the allegedly infringing  
 12 works are identical copies of the plaintiff’s works”); *GC2 Inc. v. Int’l Game Tech., IGT*,  
 13 *Doubledown Interactive LLC*, 391 F. Supp. 3d 828, 843-44 (N.D. Ill. 2019) (rejecting “the  
 14 broad proposition that derivative or collaborative works are categorically excluded from  
 15 protection under the DMCA’s provision for removal of copyright management  
 16 information”). The Court finds these cases persuasive.

17 The language of the DMCA does not require identical copies. The statute defines  
 18 “copies” as “material objects . . . in which a work is fixed by any method now known or  
 19 later developed, and from which the work can be perceived, reproduced, or otherwise  
 20 communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 101.  
 21 “Thus, to qualify as a copy under the DMCA, the allegedly infringing work must be fixed  
 22 in some tangible form, from which the work can be perceived, reproduced, or otherwise  
 23 communicated[.]” *Columbia Pictures Indus., Inc. v. Galindo*, No. 20-CV-3129, 2022 WL  
 24 17094713, at \*8 (C.D. Cal. Nov. 18, 2022) (cleaned up). This definition lacks any  
 25 requirement of an identical copy. *ADR*, 667 F. Supp. 3d at 427.

26 What is more, construing the statute to apply only to identical copies would narrow  
 27 it considerably and lead to unreasonable results. As one commentator has explained:  
 28

[T]here is no warrant to conclude . . . that no DMCA violation exists where the works are not identical. If plaintiff owns the copyright to a 300-page book and defendant propounds a work in which a single sentence is missing from that work, the two are not identical — but are still beyond doubt substantially similar. The authority supposedly requiring identity fails to withstand scrutiny.

4 Nimmer on Copyright § 12A.10 at 19 (footnotes and quotation marks omitted).

Defendants also argue they are entitled to judgment on Counts 1 and 2 because their works are not substantially similar to Plaintiff’s works. Some cases hold that a work falls outside the DMCA if it is “unquestionably a distinct work,” *Crowley v. Jones*, 608 F. Supp. 3d 78, 90 (S.D.N.Y. 2022), but Defendants provide no basis for the Court to grant judgment on this ground. Plaintiff’s complaint alleges that Defendants created their works “by copying and transcribing” Plaintiff’s work in a “substantially similar or word-for-word” manner. Doc. 42, ¶ 42. Defendants do not address this allegation or describe how the various accused works are sufficiently distinct to fall outside the statute’s prohibition.

The Court will deny Defendants’ motion on Counts 1 and 2. The Court holds that §§ 1202(a) and (b) do not require identical copies, but does not adopt a more precise construction of the statute at this point in the case. At summary judgment and trial, the parties will need to address these statutory provisions more carefully, describing exactly what they each prohibit and then showing why the various categories of the works at issue in the complaint either do or do not satisfy the statute’s requirements. Generalities like those contained in the present briefing will not be sufficient to resolve these claims.

#### **B. False Designation of Origin and False Description (Count 7).**

In Count 7, Plaintiff alleges Defendants violated the Lanham Act when they distributed “Lesson Materials” derived from Plaintiff’s intellectual property that bore only Defendants’ identifying information.<sup>3</sup> Plaintiff claims that Defendants represented that they were the “sole creators” of the Lesson Materials, which was “a false designation of

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<sup>3</sup> Plaintiff defines “Lesson Materials” as “the textual content of lesson descriptions, video worksheets, homework, and fact sheets” created and distributed by True To Life. Doc. 42 ¶¶ 45-46.

1 origin, false or misleading description of fact, and/or false or misleading representation of  
2 fact” under § 43(a) of the Lanham Act. Doc. 42, ¶ 105. Plaintiff alleges these  
3 misrepresentations “caused confusion, mistake, and/or deception as to Defendants’  
4 affiliation with Plaintiff.” *Id.* ¶ 106.

5 Defendants’ motion argues that this claim fails because Defendants created the  
6 Lesson Materials, and Plaintiff’s allegation that the Lesson Materials include Plaintiff’s  
7 intellectual property is not covered by § 43(a). Doc. 53 at 11. The Court agrees.

8 Section 43(a) creates a cause of action against a party who uses “any false  
9 designation of origin, false or misleading description of fact, or false or misleading  
10 representation of fact . . . in connection with any goods or services,” such that it “is likely  
11 to cause confusion, or to cause mistake, or to deceive . . . as to the origin, sponsorship, or  
12 approval of his or her goods.” 15 U.S.C. §1125(a). In *Dastar Corp. v. Twentieth Century*  
13 *Fox Film Corp.*, 539 U.S. 23 (2003), the Supreme Court held that the “origin” of “goods”  
14 in § 43(a) is the producer of the goods, not the producer of any intellectual property  
15 contained in the goods. Thus, the wrong addressed in the statute occurs when a defendant  
16 sells a plaintiff’s actual goods with the claim that they were made by the defendant. The  
17 statute does not apply when a defendant sells its own goods, even if those goods incorporate  
18 the plaintiff’s intellectual property. As the Supreme Court explained, “the phrase [“origin”  
19 of “goods” in § 43(a)] refers to the producer of the tangible goods that are offered for sale,  
20 and not to the author of any idea, concept, or communication embodied in those goods.”  
21 *Id.* at 37. In other words, the Lanham Act does not do the work of the Copyright Act — it  
22 does not protect the originality or creativity of a plaintiff whose intellectual property is  
23 incorporated into a defendant’s product.

24 Plaintiff cites *OTR Wheel Eng’g, Inc. v. W. Worldwide Servs., Inc.*, 897 F.3d 1008  
25 (9th Cir. 2018), in support of its argument that Defendants can be liable under § 43(a) for  
26 incorporating Plaintiff’s intellectual property into their products, but *OTR* does not support  
27 this position. The defendant in *OTR* arranged to have the plaintiff’s identifying information  
28 removed from the plaintiff’s commercial tires, and then sold the plaintiff’s tires as though

1 they were the defendant's product. *Id.* at 1013-14. The defendant did not copy the  
 2 plaintiff's intellectual property as alleged in this case; he actually sold the plaintiff's tires  
 3 as his own. *Id.* The Ninth Circuit affirmed a § 43(a) judgment against the defendant  
 4 because he "did not simply copy [the plaintiff's] intellectual property, but instead passed  
 5 off genuine [plaintiff] products as his own[.]" *Id.* at 1012-13.

6 In this case, § 43(a)'s "origin" of "goods" refers to Defendants' production of the  
 7 Lesson Materials, not to Plaintiff as the creator of the Intellectual Property allegedly  
 8 incorporated into the Lesson Materials. Defendants did not violate the Lanham Act when  
 9 they correctly identified themselves as the origin of the Lesson Materials. If there is a  
 10 claim to be asserted for Defendants' use of Plaintiff's intellectual property, it must be  
 11 brought under the Copyright Act (as Plaintiff does in other counts). As the Ninth Circuit  
 12 held in *OTR*, "[c]opying is dealt with through the copyright and patent laws, not through  
 13 trademark law." *Id.* at 1014. The Court will grant Defendants' motion on Count 7.<sup>4</sup>

#### 14 **C. Unfair Competition (Count 8).**

15 Plaintiff alleges that Defendants' "Infringing Course" and accompanying lesson  
 16 materials are "substantially similar to or otherwise copied word-for-word from" Plaintiff's  
 17 Intellectual Property.<sup>5</sup> Doc 42 ¶¶ 39, 108, 110-12. Plaintiff alleges that Defendants created  
 18 the Infringing Course about the time their contract with Plaintiff was set to expire and did  
 19 so to maintain Defendants' customer base which had come to rely on Plaintiff's material.  
 20 Plaintiff alleges that this activity constituted "palming off" of Defendants' products as  
 21 though they were Plaintiff's, resulting in unfair competition under Arizona law. *Id.* ¶¶ 108,  
 22 113, 115. Defendants' motion argues that this claim asserts nothing more than a copyright  
 23 violation and therefore is preempted by federal copyright law. Doc. 53 at 11.

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24  
 25 <sup>4</sup> Plaintiff argued during the hearing that Defendants previously alleged Plaintiff had  
 26 authorized the production of the Lesson Materials, making Plaintiff a coauthor (producer)  
 27 of those materials for purposes of § 43(a). But this assertion is not contained Plaintiff's  
 28 amended complaint, and the Court's decision must be based on the allegations of the  
 complaint. *See Xcentric Ventures, L.L.C. v. Borodkin*, 934 F. Supp. 2d 1125, 1134 (D.  
 Ariz. 2013).

<sup>5</sup> Plaintiff defines "Infringing Course" as "infringing knockoff videos that are  
 substantially similar to [Plaintiff's] own video content." Doc. 42 ¶ 46.



1           The Copyright Act preempts state law when the legal or equitable rights asserted  
 2 under state law are equivalent to the exclusive rights covered by copyright law. *See* 17  
 3 U.S.C. § 301(a)-(b); *see also Laws v. Sony Music Ent., Inc.*, 448 F.3d 1134, 1137-38 (9th  
 4 Cir. 2006). “In Arizona, the common law doctrine of unfair competition ‘encompasses  
 5 several tort theories, such as trademark infringement, false advertising, ‘palming off’ and  
 6 misappropriation.’” *ACT Grp. Inc. v. Hamlin*, No. CV-12-567-PHX-GMS, 2012 WL  
 7 2976724, at \*6 (D. Ariz. July 20, 2012). To avoid preemption, a plaintiff must “allege[]  
 8 elements that make it qualitatively different from a copyright infringement claim.” *Id.*  
 9 Claims of palming off are not preempted because the focus is on consumer confusion over  
 10 the source of the product itself — an element not required for a copyright violation. *Id.* at  
 11 \*7. A palming off claim must factually allege that the defendants wanted consumers to  
 12 believe that their product was the plaintiff’s. *Wolf Designs LLC v. Five 18 Designs LLC*,  
 13 635 F. Supp. 3d 787, 801 (D. Ariz. 2022).

14           As noted above, the Court must construe the amended complaint’s allegations in the  
 15 light most favorable to Plaintiff. *Cousins*, 568 F.3d at 1067. It must also draw all  
 16 reasonable inferences in Plaintiff’s favor. *Iqbal*, 556 U.S. at 678. So construed, Count 8  
 17 alleges that Defendants copied Plaintiff’s intellectual property to appeal to a customer base  
 18 reliant on Plaintiff’s products, used the same stock images as Plaintiff’s work and copied  
 19 Plaintiff’s content substantially or word-for-word, and thereby misled purchasers as to the  
 20 source of the products. *Id.* ¶¶ 108-15. The Court can reasonably infer from these  
 21 allegations that Defendants misled customers to believe the products were Plaintiff’s — a  
 22 claim of palming off not preempted by federal copyright law. The Court will deny  
 23 Defendant’s motion on Count 8. At summary judgment and trial, Plaintiff will be required  
 24 to prove this claim of palming off — that Defendants misled customers to believe the  
 25 products were Plaintiff’s.

#### 26           **D. Unjust Enrichment Claim (Count 10).**

27           Plaintiffs allege that “Defendants were enriched by use of Plaintiff’s Intellectual  
 28 Property, in that Defendants earned considerable revenue and market recognition as a result



1 of exploiting [Plaintiff's Intellectual Property],” and that Plaintiff was impoverished by not  
2 receiving fair compensation. Doc. 42 ¶¶ 128-29. Defendants’ motion argues that this claim  
3 merely restates Plaintiff’s copyright claim and is therefore preempted. Doc. 53 at 15.

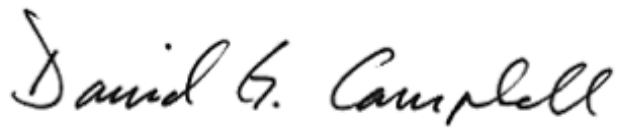
4 When the Court granted Plaintiff leave to add this count, it stated: “Plaintiff makes  
5 clear in its reply that the unjust enrichment claim is an alternative theory of liability to the  
6 contract claim, not the copyright claims . . . Courts in this Circuit have held that . . . where  
7 ‘[p]laintiff’s unjust enrichment claim is truly an alternative pleading to its breach of  
8 contract claims, it survives . . . preemption.” Doc. 39 at 4 (citations omitted). Count 10  
9 specifically states that it is pled “in the alternative.” Doc. 42 at 22.

10 The Court will hold Plaintiff to this characterization. The unjust enrichment claim  
11 will be considered only as an alternative to the breach of contract claim. At summary  
12 judgment and trial, it must be based on the wrongs alleged in the breach of contract claim  
13 (which Defendants do not claim are preempted), not on Defendants’ mere use of Plaintiff’s  
14 copyright-protected information (a claim that would be preempted).

15 Defendants correctly note that Count 10 is brought against “All Defendants” like  
16 the copyright infringement claim in Count 4, and unlike the breach-of-contract claim  
17 brought only against Defendant True To Life (Count 6). *Id.* at 17. Because Count 10 is  
18 pled only as an alternative to Count 6, it can be asserted only against the Defendant named  
19 in that count. The Court will grant Defendant’s motion to the extent Count 10 is asserted  
20 against Defendants Heritage House and Brandon Monahan.

21 **IT IS ORDERED** Defendants’ motion for partial judgment on the pleadings  
22 (Doc. 53) is **granted** on Count 7 and on Count 10 with respect to Defendants Heritage  
23 House and Brandon Monahan. The motion is otherwise **denied**.

24 Dated this 24th day of September, 2024.

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26 

27 David G. Campbell  
28 Senior United States District Judge